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No. 73-1913

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1974

KARL J. BRAY and JAMES H. L. LAWLER,
Petitioners,

v.

T. W. ELISON, *et al*, and
UNITED STATES OF AMERICA, *et al*,

On Petition for a Writ of Certiorari to The United States Court of Appeals for The Tenth Circuit

PETITIONERS REPLY TO RESPONDENTS MEMORANDUM IN OPPOSITION

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The Department of Justice in its opposition is attempting to shift the purpose of the complaint and place a false issue as the sole issue before the court. If this suit were a suit to restrain taxes as they allege, then their position would, perhaps, have merit, but this is erroneous and designed to deceive the court. The original motion requested by Bray/Lawler clearly asked restraint of only those activities "which could be construed as intimidating, harrassing or otherwise breach the privacy of petitioners". (II-R. 7, 8, 9).

> "The third party defendant assumes many false things including that the plaintiff seeks to enjoin either the collection or the assessment of tax. This is not true, and neither relief is asked nor can such relief be granted, as pointed out by the third party defendant as both are barred by 7421 U.S.C. Title 26." (II-R. 31)

Further, petitioners deliberately left open the constitutional process "unless it shall be by a warrant signed under the seal of a court stating probable cause under oath or affirmation". Since the 4th Amendment guarantees security except under those conditions, petitioners assume the court would be receptive to any reasonable request by the Internal Revenue Service.

The faulty document prepared by the United States Attorney for Utah altered this, over the objections of petitioners (II-R. 26 and II-R. 62) who clearly asked for dismissal (Record 84) of said faulty instrument, requesting that the court get on with the main issues (II-R. 85)

In addition, petitioners clearly did not wish to restrain the accessment of taxes. Quite to the contrary, petitioner Lawler (II-R. 51) asked for a writ to compel the local Internal Revenue Service office to access his taxes as a ministerial duty clearly owing to Lawler. Petitioner asserted, inter alia, that he had provided all the information needed, but if that were not the case, petitioner assumes

that if the Internal Revenue Service could show reasonable need for further information then the court would consider the reasonableness and the constitutionality of said request and if there were no legal bar, petitioner assumes that the court would have the power to acquire any needed records. It is fully proper to ask that an impartial judiciary be interposed between petitioner and what he stated was a hostile executive branch to halt deliberate infringement of protected rights and liberties, and petitioner asked for that writ to make it crystal clear that he had no intention of restraint of accessment. Contrary to this, the Internal Revenue Service has deliberately moved in such a way as to assume that restraint of accessment was the purpose, so as to remove all judicial restraint from itself. Petitioner asserts that the Internal Revenue Service *is* subject to the courts of the United States which are charged with the protection of certain guaranteed liberties, and that the 1st Amendment clearly prohibits any law which would inhibit a petition for redress of grievances to said courts.

The statement that petitioner Lawler did not make a return for 1971 goes directly to the heart of a question raised by petitioners:

> "8. Whether the present practice implicit in Form 1040 violates the privilege against self-incrimination by forcing taxpayer to unwittingly provide information which might be used against himself." (Petition for Writ of Certiorari, page 3)

Petitioner Lawler contends he did, in fact, file a letter return (R. 109, inter alia) and that Form 1040 as now constituted violates 5th Amendment privilege against self-incrimination and is hence unconstitutional in that it *forces* petitioner to provide information by seizing and retaining funds unless or until such information is provided, which might be used under I.R.S. 7201-7206 against him in criminal action.

Petitioner Lawler clearly submitted (R. 109) a letter return providing full information and requesting the Internal Revenue Service to access taxes on a standard short form basis, and note that petitioner Lawler's return was maliciously held up well past any reasonable investigation of possible liability. Note also he had *overpaid*, and was not trying to evade taxes, and the Charleston, South Carolina, Internal Revenue Service office, as soon as petitioner applied to them, did routinely process his return making full refund of monies which had been withheld from Lawler by the Utah office.

Petitioner Lawler has stated and restated he is complying with the court rules as best he knows them, to end what he believes to be an intolerable injustice. At this point, it must be pointed out that the law must be for all the people, not just the lawyers or any select group, and if the common man no longer has the ear of the court as guaranteed in the 1st Amendment, then we exist under a tyranny.

Petitioner is tired of misrepresentations and outright flouting of the law by respondents and petitioner asks for a redress of these grievances. Specifically, the lower court dismissed this case simply because it was *pro se* and not for the reasons stated by the appellate court at all, and this is clearly shown in the transcript of 18 August, 1972, page 4, and by the intemperate statements following as encouraged by Mr. Dowd, as well as the statements of 28 July, 1973, page 4/5 where, upon learning petitioner had proceeded pro se, the court said:

> "The Court: Well, what are you talking about? We are not going to enter into any arrangements, any agreements. We are going to pass on what is before me, and what happens beyond that I have nothing to do with. That is the way we proceed here. What do you think this is, a "five and Dime"?
>
> "Mr. Kinghorn: No, your Honor. I certainly do not.
>
> 'The Court: J. C. Penney? It looks to me as though you just stipulated that what the fellow has on file ought to be dismissed.
>
> "Mr. Biggins: Yes, your Honor.
>
> "The Court: All right, it is.
>
> "Mr. Biggins: Thank you, your Honor.

> "The Court: The mandate is filed, and all motions and applications in this matter are dismissed, and that is that.
>
> "Mr. Kinghorn: That concludes the plaintiffs' pro se complaint, your Honor?
>
> "The Court: That concludes everything he has filed in this file that you were just telling me was so complicated and voluminous and imperfectly prepared that you needed to have the consent of the court to do something about it. You just proceed in your own way from this point on now. So far as these proceedings, and every one of them, in every detail, it is dismissed."

Mr. Biggers broke his word in that petitioner had agreed to try and streamline the case. Many of the motions before the court were either moot or partially incorrect because of later developments and we had agreed to rephrase all of these motions. Mr. Biggers took advantage of the situation in what was an unethical breach of his given word.

As for flouting the law, petitioner Lawler contends that II-R. 103, 109 (the affidavit of S. Schochet attaching letter page 109) violates 26 U.S.C. 7213 (1) which clearly makes it a crime to do what he did:

> "It shall be unlawful for any officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the amount or source of

> income, profits, losses, expenditures, or any particular thereof . . . or . . . any abstract or particulars thereof"

and others have engaged in obstruction of justice and conspiracy to disseminate the above by refusal to enforce 26 U.S.C. 7213.

Petitioner's faith in the judicial system has been very badly shaken by the actions of the lower courts which violated virtually every sense of common justice. Petitioners ask this court to exert its powers to correct a departure from justice which is so great that it shocks the senses of a common man, to decide issues which are of such import that only the Supreme Court itself can decide them, and to prevent further departures from timely, accurate decision and to prevent further attempts to stall, misrepresent, alter purpose and generally exhaust the resources of petitioners, one of whom is now fully impecunious and the other on the verge of bankruptcy because of their attempts to obtain justice.

Petitioner further notes that in a series of letters in July and early August, 1971, this court itself referred petitioner Lawler to the lower court stating clearly that the lower court had original jurisdiction to have the issues presented and now said lower court is openly defying that referral.

Respectfully submitted,

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